

ESTTA Tracking number: **ESTTA147332**

Filing date: **06/22/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Until There's A Cure Foundation
Granted to Date of previous extension	06/24/2007
Address	560 Mountain Home Road Redwood City, CA 94062 UNITED STATES
Attorney information	Mark S. Warnick Wilson Sonsini Goodrich & Rosati 650 Page Mill Road Palo Alto, CA 94304-1050 UNITED STATES trademarks@wsgr.com, mwarnick@wsgr.com, clarsen@wsgr.com Phone:6504939300

Applicant Information

Application No	78885968	Publication date	12/26/2006
Opposition Filing Date	06/22/2007	Opposition Period Ends	06/24/2007
Applicant	Cadbury Ireland Ltd. Malahide Road Coolock, Dublin 5, IRELAND		

Goods/Services Affected by Opposition

Class 005. All goods and sevicees in the class are opposed, namely: Medicated confectionery, namely lozenges and cough drops
Class 030. All goods and sevicees in the class are opposed, namely: Non-medicated throat drops and candy

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1834578	Application Date	02/26/1993
Registration Date	05/03/1994	Foreign Priority	NONE

		Date	
Word Mark	UNTIL THERE'S A CURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 014. First use: First Use: 1993/07/25 First Use In Commerce: 1993/07/25 jewelry		

U.S. Registration No.	2038938	Application Date	03/28/1996
Registration Date	02/18/1997	Foreign Priority Date	NONE
Word Mark	UNTIL THERE'S A CURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 036. First use: First Use: 1993/07/00 First Use In Commerce: 1994/07/31 charitable fundraising		

U.S. Registration No.	2181113	Application Date	05/16/1996
Registration Date	08/11/1998	Foreign Priority Date	NONE
Word Mark	UNTIL THERE'S A CURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1995/08/13 First Use In Commerce: 1997/08/14 clothing, namely, shirts and head wear		

U.S. Registration No.	2170466	Application Date	03/28/1996
Registration Date	06/30/1998	Foreign Priority Date	NONE
Word Mark	UNTIL THERE'S A CURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1995/08/13 First Use In Commerce: 1997/08/14 printed matter, namely books, pamphlets, brochures, fliers, or magazines, all in the fields of infectious diseases or public awareness of infectious diseases		

Attachments	Notice of Opposition.pdf (4 pages)(145154 bytes)
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Signature	/Mark S. Warnick/
Name	Mark S. Warnick
Date	06/22/2007

UNTIL THERE'S A CURE, a California
not-for-profit corporation,

Opposer,

v.

CADBURY IRELAND LTD., an Irish
corporation,

Applicant.

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Opposition No.

NOTICE OF OPPOSITION

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THERE'S A CURE. Since 1994, Opposer has sold more than 850,000 bracelets and raised more than \$7 million to fund preventive education, care services and vaccine development.

2. Opposer has continuously used the trademark UNTIL THERE'S A CURE in connection with jewelry since at least as early as 1993, in connection with charitable fundraising since at least as early as 1994, in connection with shirts and head wear since at least as early as 1997, and in connection with books, pamphlets, brochures, fliers or magazines in the fields of infectious diseases or public awareness of infectious diseases since at least as early as 1997.

3. Opposer is the owner of the following trademark registrations for UNTIL THERE'S A CURE:

- a. Reg. No. 1,834,578 for UNTIL THERE'S A CURE for "jewelry" in International Class 14, registered May 3, 1994;
- b. Reg. No. 2,038,938 for UNTIL THERE'S A CURE for "charitable fundraising" in International Class 36, registered February 18, 1997;
- c. Reg. No. 2,181,113 for UNTIL THERE'S A CURE for "clothing, namely shirts and head wear" in International Class 25, registered August 11, 1998; and
- d. Reg. No. 2,170,466 for UNTIL THERE'S A CURE for "printed matter, namely books, pamphlets, brochures, fliers, or magazines, all in the fields of infectious diseases or public awareness of infectious diseases" in International Class 16, registered June 30, 1998.

4. Opposer's UNTIL THERE'S A CURE trademark is an inherently distinctive mark that identifies to the public products and services designed to raise public awareness and combat a major health crisis originating only with Opposer.

5. Through Opposer's continued and exclusive use of the mark, and as a result of the substantial publicity of Opposer's mark for more than a decade, the mark UNTIL THERE'S A CURE has achieved widespread marketplace reputation, particularly in the United States.

6. Opposer's UNTIL THERE'S A CURE mark is "famous" within the meaning in the Lanham Act. This fame predates the Application.

7. Opposer is informed and believes, and therefore alleges, that on May 17, 2006, Applicant Cadbury Ireland Ltd. ("Applicant") filed the Application in the United States Patent and Trademark Office for UNTIL THERE IS A CURE FOR THE COUGH, THERE IS HALLS as a goods mark in International Classes 5 and 30. The identification of goods in the Application includes "medicated confectionery, namely lozenges and cough drops; non-medicated throat drops and candy."

8. The Application was published for Opposition on December 26, 2006. Opposer secured extensions of time in which to oppose the Application.

9. Opposer is informed and believes, and therefore alleges, that Applicant did not use the UNTIL THERE IS A CURE FOR THE COUGH, THERE IS HALLS mark in the United States before May 17, 2006, the filing date of the Application.

10. Applicant's mark so resembles Opposer's mark as to be likely, when used in connection with the goods of Applicant, to cause confusion or to cause mistake, or to deceive as to the source, sponsorship, or affiliation of Applicant's goods and Opposer's goods and services.

11. If Applicant is permitted to register UNTIL THERE IS A CURE FOR THE COUGH, THERE IS HALLS for the goods described in the Application, confusion in the trade and in the public is likely to result. Confusion caused by Applicant will damage Opposer and injure its reputation in the trade and with the public. That confusion will also injure the public,

in that consumers, upon seeing Applicant's mark used in connection with Applicant's goods, are likely to believe that Applicant's goods are somehow associated with or approved by Opposer.

12. If Applicant is permitted to register UNTIL THERE IS A CURE FOR THE COUGH, THERE IS HALLS for the goods described in the Application, the distinctiveness of Opposer's mark will be diluted.

WHEREFORE, Opposer prays that Application Serial No. 78/885,968 be rejected, that no registration be issued to Applicant, and that this opposition be sustained in favor of Opposer.

Opposer authorizes payment of the required filing fee of \$600.00 from its counsel's USPTO Deposit Account. Please charge the fee to Deposit Account No. 23-2415 ATTN: 9040.507.

Please address all U.S.P.T.O. communications regarding this Notice of Opposition to:

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Date: June 22, 2007

Respectfully Submitted,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

By: _____



Mark S. Warnick
Attorneys for Opposer
Until There's A Cure Foundation